

ASSEMBLY BILL

No. 239

Introduced by Assembly Member Runner

February 14, 2001

An act to amend Section 11380.1 of, and to add Section 11379.11 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 239, as introduced, Runner. Controlled substances: methamphetamine and phencyclidine.

(1) Existing law provides that every person who manufactures, compounds, converts, produces, derives, processes, or prepares methamphetamine or phencyclidine shall be punished by a fine not exceeding \$50,000, and 3, 5, or 7 years in the state prison, and that a person who commits these crimes, or possesses precursors of methamphetamine or phencyclidine, in a structure where any child under 16 years of age is present shall receive an additional punishment of 2 years in the state prison.

This bill would generally provide, in addition, that any person convicted of these crimes, when the commission or attempted commission of the crime occurs in a structure located within 1,000 feet of a dwelling unit, as defined, shall receive an additional punishment of 3 years in the state prison. By creating a new enhancement, this bill would impose a state-mandated local program upon local governments.

(2) Existing law provides that every person 18 years of age or over who commits a controlled substance offense involving methamphetamine or phencyclidine by the use of a minor as an agent or who induces a minor to commit a controlled substance offense involving methamphetamine or phencyclidine shall be punished by

imprisonment in the state prison for 3, 6, or 9 years. An additional punishment of 2 years in the state prison is imposed on any person who commits these offenses on school grounds during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs.

This bill would increase the scope of persons subject to the above enhancement by deleting the condition that the offense must have occurred during specified hours or times.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11379.11 is added to the Health and
2 Safety Code, to read:

3 11379.11. (a) Any person convicted of a violation of
4 subdivision (a) of Section 11379.6 or Section 11383, or of an
5 attempt to violate subdivision (a) of Section 11379.6 or Section
6 11383, as those sections relate to methamphetamine or
7 phencyclidine, when the commission or attempted commission of
8 the crime occurs in a structure located within 1,000 feet of a
9 dwelling unit other than the structure in which the crime is
10 committed or attempted to be committed, unless that structure
11 includes other dwelling units, shall, in addition and consecutive to
12 the punishment prescribed for the felony of which he or she has
13 been convicted, be punished by an additional term of three years
14 in the state prison.

15 (b) As used in this section, the following terms have the
16 following meanings:

17 (1) "Structure" means any house, motor home, apartment
18 building, shop, warehouse, barn, building, garage, or outbuilding
19 capable of holding manufacturing equipment.

20 (2) "Dwelling unit" means a structure, or that part of the
21 structure, that is designed for human habitation, is in habitable

condition, and is currently being used for the purpose of human habitation, whether occupied or not.

(c) A defendant shall not be punished under both this section and subdivision (a) of Section 11379.7. If both this section and subdivision (a) of Section 11379.7 apply, the court shall impose punishment under the section that will result in the longest prison sentence.

SEC. 2. Section 11380.1 of the Health and Safety Code is amended to read:

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, a child day care facility, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high school, or high school, ~~during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs,~~ the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

1 (b) The additional punishment provided in this section shall not
2 be imposed unless the allegation is charged in the accusatory
3 pleading and admitted by the defendant or found to be true by the
4 trier of fact.

5 (c) The additional punishment provided in this section shall be
6 in addition to any other punishment provided by law and shall not
7 be limited by any other provision of law.

8 (d) Notwithstanding any other provision of law, the court may
9 strike the additional punishment provided for in this section if it
10 determines that there are circumstances in mitigation of the
11 additional punishment and states on the record its reasons for
12 striking the additional punishment.

13 (e) The definitions contained in subdivision (e) of Section
14 11353.1 shall apply to this section.

15 (f) This section does not require either that notice be posted
16 regarding the proscribed conduct or that the applicable 1,000-foot
17 boundary limit be marked.

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

